

Alabama Rules of Disciplinary Procedure

Rule 27.

Transfer to disability inactive status.

(a) *Lawyer Declared Incompetent or Mentally Ill.* If a lawyer has been judicially declared incompetent or mentally ill, or has been committed or confined by judicial action on the grounds of incompetency or mental illness, the Disciplinary Board, upon proper proof of the fact, shall enter an order transferring such lawyer to disability inactive status. A copy of the order shall be served upon such lawyer and his or her guardian, if any, and if he or she has been committed to an institution, upon the director of such institution, in such manner as the Disciplinary Board may direct.

(b) *Petition to Determine Incapacity.* If a petition is filed to determine whether a lawyer who is engaged in the practice of law is incapacitated from continuing the practice of law by reason of mental or physical infirmity or illness, or because of addiction to drugs or intoxicants, such petition shall be referred to the Disciplinary Board. The Disciplinary Board shall provide for such notice of proceedings in the matter to the respondent as it deems proper and advisable and may appoint a lawyer to represent the respondent, if he or she is without adequate representation. The Disciplinary Board may take or direct such action to be taken as it deems necessary or proper to determine whether the lawyer is so incapacitated, including the examination of the lawyer by such qualified medical experts as the Disciplinary Board shall designate. If, upon due consideration of the matter, the Disciplinary Board concludes that the lawyer is incapacitated from continuing to practice law, it shall enter an order transferring him or her to disability inactive status on the ground of such disability.

(c) *Incapacity Claimed by Respondent Lawyer.* If, during the course of a disciplinary proceeding, the respondent contends that he or she is suffering from a disability by reason of mental or physical infirmity, illness, or addiction to drugs or intoxicants, which makes it impossible for the respondent to adequately defend himself or herself, the Disciplinary Board shall enter an order transferring the respondent to disability inactive status until a determination is made of the respondent's ability to adequately defend himself or herself. The Disciplinary Board shall appoint a lawyer to represent the respondent if he or she is without adequate representation, and may take or direct such action to be taken as it deems necessary or proper to determine whether the respondent is able to adequately defend himself or herself, including the examination of the respondent by such qualified medical experts as the Disciplinary Board shall designate. If the Disciplinary Board determines that the respondent is able to adequately defend himself or herself, it shall take such action as it deems proper and advisable, including a direction for the resumption of the disciplinary proceedings against the respondent.

(d) *Appeal.* Either party may appeal the decision of the Disciplinary Board, in accordance with the procedures set out in Rule 12(f). Whether the action of the

Disciplinary Board will be stayed during the appeal is within the discretion of the Alabama Supreme Court.

(e) *Disciplinary Proceedings Stayed.* A pending disciplinary proceeding against the respondent shall be held in abeyance so long as the respondent remains on disability inactive status.

(f) *Expenses.* All expenses incurred in paragraphs (a), (b), or (c) of this rule, including legal and medical fees, shall be borne by the respondent, unless the indigency of the respondent is affirmatively established, in which case all reasonable legal and medical fees, as determined by the Disciplinary Board, may be paid upon application to the Client Security Fund.

(g) *Reinstatement.* A lawyer transferred to disability inactive status under the provisions of this rule may not resume active status until reinstated by order of the Disciplinary Board. Pursuant to Rule 28 of these Rules and Appendix "A" to these Rules, a lawyer transferred to disability inactive status under the provisions of this rule shall be entitled to petition for reinstatement to active status once a year or at such shorter intervals as the Disciplinary Board may direct in the order transferring the respondent to disability inactive status or any modification thereof. Such petition shall be granted upon a showing by clear and convincing evidence that the lawyer's disability has been removed and that he or she is fit to resume the practice of law. Upon such application, the Disciplinary Board may take or direct such action to be taken as it deems necessary or proper to determine whether the lawyer's disability has been removed, including a direction for an examination of the lawyer by such qualified medical experts as the Disciplinary Board shall designate. In its discretion, the Disciplinary Board may direct that the expense of such examination shall be paid by the lawyer, and that the lawyer establish proof of competence and learning in law, which proof may include certification by the Bar Examiners of his or her successful completion of an examination for admission to practice.

If a lawyer has been transferred to disability inactive status by an order in accordance with the provisions of paragraph (a) of this rule and thereafter has been judicially declared to be competent, the Disciplinary Board may dispense with further evidence that his or her disability has been removed and may direct his or her reinstatement to active status upon such terms as are deemed proper and advisable.

(h) *Burden of Proof.* In a proceeding seeking to transfer a lawyer to disability inactive status under this rule, the burden of proof shall rest with the petitioner. In a proceeding seeking an order of reinstatement to active status under this rule, the burden of proof shall rest with the applicant.

(i) *Waiver of Physician-Patient Privilege.* The filing of a petition for reinstatement to active status by a lawyer transferred to disability inactive status shall be deemed to constitute a waiver of any physician-patient privilege with respect to any treatment of the lawyer during or prior to the period of disability. The lawyer shall be required to disclose

the name of every psychiatrist, psychologist, and physician by whom, and every hospital or other institution in which, the lawyer has been examined or treated with respect to his or her disability, and the lawyer shall furnish to the Disciplinary Board written consent to each to divulge such information and records as may be requested by medical experts appointed by the General Counsel or the Disciplinary Commission.

(j) *Confidentiality of Rule 27 Proceedings.* All pleadings and orders arising from a Rule 27 proceeding shall be confidential and shall not be publicly available. Publication pursuant to Rule 26(e) and Rule 33(a) of a lawyer's transfer to Rule 27 inactive status shall not identify the reason for the lawyer's transfer and shall state only that the lawyer has been transferred to inactive status.

[Amended eff. 8-1-2000; Amended 9-12-2008, eff. 10-6-2008; Amended 4-11-2018.]

Note from the reporter of decisions: The order amending Rule 27(d), effective August 1, 2000, is published in that volume of *Alabama Reporter* that contains Alabama cases from 753 So.2d.

Note from the reporter of decisions: The order amending Rule 4, Rule 4.1, Rule 4.2, Rule 5, Rule 8, Rule 12, Rule 15, Rule 20, Rule 21, Rule 22, Rule 23, Rule 27, Rule 28, Rule 29, Rule 32, Rule 33, and Rule 35, and adopting Rule 12.1, effective October 6, 2008, is published in that volume of *Alabama Reporter* that contains Alabama cases from 994 So.2d.

Note from the reporter of decisions: The order amending Rule 26(e), Rule 27(j), and Rule 30(b), Ala. R. Disc. P., effective April 11, 2018, is published in that volume of *Alabama Reporter* that contains Alabama cases from ____ So. 3d.